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Advisability of the appointment of a special rapporteur on laws that discriminate against women

Report of the Secretary-General

Summary

The present report has been prepared pursuant to Commission on the Status of Women resolution 50/3 of 10 March 2006 on the advisability of the appointment of a special rapporteur on laws that discriminate against women. It presents a brief summary of the previous report of the Secretary-General on this topic, submitted to the Commission at its fiftieth session (E/CN.6/2006/8). It summarizes the views of Member States, observers, the Office of the United Nations High Commissioner for Human Rights and treaty bodies on the previous report, as well as on the issue of the advisability of the appointment of a special rapporteur on laws that discriminate against women. The present report complements the previous report and should therefore be read in conjunction with it.

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I. Background and introduction

1. In 2005 the Commission on the Status of Women decided to consider at its fiftieth session the advisability of the appointment of special rapporteur on laws that discriminate against women (see Commission resolution 49/3). It requested the Secretary-General to report to it at that session on the implications of the creation of such a position. The report submitted in response to that request, containing the views of Member States and observers, as well as of the Committee on the Elimination of Discrimination against Women and the Office of the United Nations High Commissioner for Human Rights (OHCHR), was before the Commission in document E/CN.6/2006/8 (hereinafter referred to as the 2006 report).

2. In its resolution 50/3 of 10 March 2006, the Commission on the Status of Women took note of the 2006 report of the Secretary-General. It invited the Secretary-General to bring his 2006 report to the attention of the Committee on the Elimination of Discrimination against Women and other relevant treaty bodies with a view to eliciting their views on ways and means that could best complement the work of the existing mechanisms and enhance the Commission's capacity with respect to discriminatory laws. The Commission also invited OHCHR to provide its views thereon. Furthermore, the Commission invited Member States and observers to submit to the Secretary-General their further views on the 2006 report. The Commission decided, on the basis of the report of the Secretary-General and the requested views thereon, to consider at its fifty-first session the advisability of the appointment of a special rapporteur on laws that discriminate against women, bearing in mind the existing mechanisms with a view to avoiding duplication.

3. In a note verbale dated 7 September 2006 the Secretary-General requested Member States and observers to provide their views on his 2006 report. Requests for views were also sent to OHCHR and the human rights treaty bodies. The following 28 Member States and observers submitted views: Armenia, Austria, Azerbaijan, Bahrain, Belgium, Brunei Darussalam, Canada, Colombia, China, Cuba, the Czech Republic, Egypt, the Holy See, Germany, Greece, Hungary, Lebanon, Lithuania, Luxembourg, Malaysia, Portugal, the Republic of Korea, Rwanda, San Marino, Slovenia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yemen. OHCHR also provided a response.

4. The Committee on the Elimination of Discrimination against Women considered the request of the Commission at its thirty-sixth session, without proposing any views on ways and means that could best complement the work of the existing mechanisms and enhance the Commission's capacity with respect to discriminatory laws.[1] The views of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and of the Human Rights Committee are included in section III below.

5. The present report complements the 2006 report on the subject. After a brief synopsis of the 2006 report, it summarizes the views received from Member States, observers,[2] OHCHR and treaty bodies on that report, as well as views on the question of the appointment of a special rapporteur on laws that discriminate against women. It offers a set of recommendations for consideration by the Commission.

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[1] The Committee's views in response to resolution 49/3 are reflected in the 2006 report.

[2] Canada, Colombia, the Holy See, Lebanon, the Republic of Korea, the United Kingdom of Great Britain and Northern Ireland (then on behalf of the European Union) and the United States of America also submitted views for the 2006 report.

II. Synopsis of the 2006 report

6. The 2006 report presented an analysis of international human rights instruments and policy documents relevant to the elimination of laws that discriminate against women, as well as mechanisms that address laws that discriminate against women. It summarized the views received from Member States and observers, the Committee on the Elimination of Discrimination against Women and OHCHR. It presented the implications of the creation of the position of special rapporteur and recommendations for consideration by the Commission on the Status of Women.

7. The report concluded[3] that the importance of eliminating laws that discriminate against women had long been recognized by the international community, as reflected in a number of relevant international policy documents and instruments aimed at promoting gender equality and the advancement of women. It also concluded that, notwithstanding these efforts, de jure discrimination against women persisted in many areas, constituting an obstacle to women's full enjoyment of their rights under domestic laws.

8. The report also concluded that various mechanisms addressed discrimination against women within their mandates to some extent, but that their attention to such discrimination was not systematic, and attention to laws that discriminate against women was even less systematic. Of the existing mechanisms, only the Committee on the Elimination of Discrimination against Women consistently addressed de jure inequality within its comprehensive mandate of tackling all forms of discrimination against women in States parties to the Convention on the Elimination of All Forms of Discrimination against Women. Sex-discriminatory legislation had also not received systematic attention under the communications procedure of the Commission on the Status of Women.

9. The report further concluded that a dedicated mechanism that would tackle such laws as its primary and exclusive concern, rather than as incidental to a broader mandate, from a global perspective, could provide the necessary momentum for change. A new mechanism of the Commission on the Status of Women would significantly enhance the Commission's capacity to monitor implementation of the Beijing Platform for Action and the outcome of the twenty-third special session of the General Assembly in the area of discriminatory laws. It also concluded that the work of such a new mechanism could also be beneficial to the Committee on the Elimination of Discrimination against Women.

III. Views of Member States, observers, human rights treaty bodies and the Office of the United Nations High Commissioner for Human Rights

Views on the 2006 report

10. Some Member States, including Belgium, Germany, San Marino and Slovenia, provided views on the 2006 report, as requested in Commission resolution 50/3. San

[3] See E/CN.6/2006/8, paras. 60-68.

Marino favourably considered the proposal contained in the 2006 report, while Slovenia fully concurred with the report's conclusion that a dedicated mechanism that would tackle such laws as its primary and exclusive concern, rather than as incidental to a broader mandate, from a global perspective, could provide the necessary momentum for change that had so far been absent. Belgium and Germany suggested that the creation of a special rapporteur on laws that discriminate against women carried the risk of duplicating functions and reducing the recognition of successfully functioning mechanisms, including the Committee on the Elimination of Discrimination against Women.

11. Some Member States saw a need for further debate on the proposal for a new mechanism. Egypt suggested that delegations should exchange views on all aspects of the suggested appointment, including the mandate, its added value, the financial implications and whether such a mandate would be funded from assessed or voluntary contributions. According to Hungary, a discussion was needed within the context of the programme of work of the Commission on the Status of Women from 2007 onwards, and the future role of the Commission's communications procedure. Malaysia suggested that Member States be given more time to study the proposal. The United Kingdom of Great Britain and Northern Ireland stated that it would welcome the opportunity to debate the issue.

United Nations reform process

12. Several Member States commented on the proposal of a new mandate of the Commission on the Status of Women in relation to the ongoing reform discussions within the United Nations. China suggested that the goals of the United Nations reform should serve as guidelines for the Commission in considering the creation of a new mechanism. Cuba emphasized that the proliferation of new mechanisms and procedures with similar mandates and functions would not facilitate coherence in the work of the United Nations related to the advancement of women. According to Portugal, there was an urgent need to increase and clarify the role of the Commission on the Status of Women regarding gender issues within the United Nations system, as well as communication among the different institutions dealing with gender equality. Until such clarifications were achieved, Portugal did not find any added value in the creation of a new mechanism. Canada noted that a special rapporteur should be developed in a way that built on and supported the larger United Nations reform process, including current discussions on coherence within the United Nations system and the mandate review of the special procedures established by the Commission on Human Rights.

13. Malaysia, the United States of America and OHCHR suggested that the possible appointment of a special rapporteur on laws that discriminate against women be considered after the conclusion of the review by the Human Rights Council of the special procedures established by the Commission on Human Rights. The Human Rights Committee noted that it could not express its views on the issue until the Human Rights Council had concluded that review.

Relationship of a new mechanism with existing United Nations mechanisms

14. Several Member States addressed the relationship between a new mechanism on laws that discriminate against women and the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women, the Human Rights Council, the special procedures established by the Commission on Human Rights and the Peacebuilding Commission. Lebanon and the Republic of Korea reiterated their previously submitted comments on this question: Lebanon stressed the need for strong institutional linkages between a new mechanism and existing mechanisms, and the Republic of Korea indicated that such a new mechanism would complement the work of existing ones.[4] Slovenia stated that it would support the establishment of a special rapporteur by the Commission on the Status of Women, or the establishment of such a procedure jointly by the Commission on the Status of Women and the Human Rights Council. Yemen, while indicating that it had no objections to the appointment of a special rapporteur, suggested that a review of mechanisms would need to be undertaken concerning the powers and functions of such a new mechanism.

15. Some Member States, including Canada, Lithuania, Slovenia and Rwanda, believed that a special rapporteur could strengthen the work of the Commission on the Status of Women in monitoring the implementation of the Beijing Platform for Action. According to Austria, a special rapporteur could play a useful role in preparing the consideration of the main theme of the sessions of the Commission on the Status of Women. He/she could analyse the specific legislation and the impact of such legislation on the status of women in the given thematic areas and provide the Commission with current information about the status quo in such areas. According to Slovenia, such a special rapporteur would be a thematic mechanism well-suited for the Commission and could assist it in providing a basis for meaningful interaction with Member States on an ongoing basis regarding discriminatory legislation. A cross-cutting thematic examination of such laws would facilitate the exchange of information among States and other actors.

16. Austria and Slovenia were of the view that the creation of a special rapporteur would complement the work of the Committee on the Elimination of Discrimination against Women. Austria pointed out that, while the Committee on the Elimination of Discrimination against Women examined implementation of the Convention on the Elimination of All Forms of Discrimination against Women in one country at a time every four years, a special rapporteur would review sex-discriminatory legislation in a specific thematic area and highlight global or regional trends.

17. Canada indicated that, given the interlinkages between the Commission and the Committee on the Elimination of Discrimination against Women and other human rights bodies, care should be taken to ensure that a special rapporteur would use and build upon the work of those bodies. Consideration should be given to how the work of a special rapporteur could complement the existing mandates and work of other special rapporteurs, including the Special Rapporteur on violence against women, its causes and consequences. Rwanda and Slovenia suggested that a special rapporteur could complement and increase the efficiency of existing bodies and mechanisms, since none of them had a specific mandate to address laws that

[4] Ibid., paras. 46, 47, 49 and 51.

discriminate against women or a primary and exclusive mandate to tackle such laws. Slovenia also noted that a special rapporteur could provide important input to the work of the Human Rights Council and the newly established Peacebuilding Commission.

18. A number of Member States, including Belgium, China, Colombia, Cuba, the Czech Republic, Germany and Egypt, noted that the creation of a new mechanism would duplicate the work of existing mechanisms such as the Committee on the Elimination of Discrimination against Women and recommended that those mechanisms be fully utilized and strengthened. China suggested that full use should be made of existing mechanisms and resources. Drawing attention to the functions of the human rights treaty bodies, China suggested that rather than creating a new mechanism, the efficiency of current mechanisms be enhanced, communication and cooperation between treaty bodies and States parties facilitated and the capacity-building of States parties supported. Cuba considered the creation of a new mechanism inappropriate and unnecessary and noted that several existing procedures and mechanisms dealt with laws that discriminate against women, in particular the Committee on the Elimination of Discrimination against Women. It called for the allocation of sufficient financial resources to the Committee so as to guarantee its proper functioning. Egypt requested that the Committee be officially consulted, specifically with respect to mandates. Germany expressed support for efforts to strengthen the Committee on the Elimination of Discrimination against Women and its cooperation with the Commission on the Status of Women. For example, the Committee could participate and play a special and decisive role during the meetings of the Commission on the Status of Women.

Mandate of a special rapporteur on laws that discriminate against women

19. Several Member States, including Bahrain, Greece, Luxembourg and San Marino, stated that they could support a new mandate provided that it would not duplicate or be in conflict with any existing procedures. Azerbaijan, while supporting the idea of the appointment of such a special rapporteur, noted that the mandate should be carefully designed so as to maximize its impact. Canada expressed support, in principle, for the establishment of a special rapporteur with a broad mandate whose objectives would be to strengthen and give more prominence to the work of the Commission on the Status of Women and its monitoring of the commitments contained in the Beijing Platform for Action and the outcome of the twenty-third special session of the General Assembly, as well as of the Committee on the Elimination of Discrimination against Women. San Marino, while considering the proposal favourably, underlined that the mandate of a special rapporteur would have to be harmonized with the mandates of all other mechanisms working on gender equality issues. Several other Member States, including Lithuania, Malaysia, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, highlighted the importance of ensuring that any mandate did not duplicate the work of existing mechanisms or bodies, such as the Committee on the Elimination of Discrimination against Women or the Special Rapporteur on violence against women.

20. Austria suggested that the new mechanism be called an "independent expert" rather than a "special rapporteur". Slovenia proposed that a special rapporteur be appointed preferably for a three- or four-year period with a sufficiently strong mandate. Lebanon and the United States of America reiterated their previous suggestions pertaining to the terms of reference of such a mandate, whereby Lebanon recommended that a special rapporteur collect complaints, as well as provide assistance to Member States in modifying or updating relevant laws; and the United States suggested that such a mechanism collect information and focus on laws that discriminate against women in specific areas.[5]

21. Canada, Rwanda and Slovenia suggested that a special rapporteur collect information on existing laws that discriminate against women and provide advice and support to national legislative initiatives aimed at eliminating existing discriminatory legal provisions. While Lithuania indicated that a special rapporteur should focus exclusively on de jure discrimination, Canada proposed that a special rapporteur also give close consideration to the effective application of legislation, including discriminatory application and effects of laws that were not in and of themselves discriminatory, such as low prosecution rates for sexual assault reported to the police. Canada also proposed that the following elements be included in the mandate: access to justice and the notion of exhaustion of domestic remedies; a detailed explanation of the methods to be used to collect information on laws that discriminate against women; and the extent to which Member States would be expected to respond to such requests for information from the mechanism. According to Canada, there should be an explicit connection between a communications element that would likely be inherent in any special rapporteur's mandate and the Commission's Working Group on Communications on the Status of Women.

22. Several Member States suggested that a special rapporteur contribute to the promotion of change at the national level. Austria, Lithuania, Rwanda and Slovenia proposed that a special rapporteur engage in dialogue with Member States. According to Canada, the mandate of such a mechanism should include the possibility of fact-finding missions or country visits. Slovenia recommended that a special rapporteur cooperate and interact with all relevant actors, including grass-roots organizations and civil society, and serve as an advocate at the international, regional and national levels for the importance of gender equality laws.

23. Austria proposed that the new mechanism identify best practice models from different regions and subregions and assess the types of laws that worked best, as well as prepare checklists of aspects to be contained in legislation. Slovenia suggested that it also collect good practices and lessons learned so as to promote a constructive exchange among interested Governments.

24. According to Austria and Canada, the work of such a new mechanism could be organized thematically in support of the Commission's work and overall mandate. Canada indicated that such a mechanism could consider, for example, property rights, succession, education, involvement in the political process, legal capacity and/or family law. Such a mechanism could also undertake a thematic analysis of sex-discriminatory laws, such as laws that might have an impact on indigenous women and their ability to fully engage as equal members of society.

[5] Ibid., paras. 53 and 57.

25. Some Member States, including Lithuania, Rwanda and Slovenia, suggested that the mandate of such a new mechanism reflect ways to collaborate with existing mechanisms as well as with relevant parts of the United Nations system, including the Committee on the Elimination of Discrimination against Women. According to Lithuania, a special rapporteur could benefit from information received from other human rights treaty bodies working on the issue of discrimination against women.

26. With regard to reporting, Rwanda indicated that a special rapporteur should present an annual report to the Commission on the Status of Women, highlighting efforts undertaken to change discriminatory laws and recommendations on how Member States could overcome obstacles in the promotion of women's rights and gender equality. According to Slovenia, a special rapporteur should provide yearly reports to its founding body.

27. Malaysia noted the importance of ensuring that the appointment of a special rapporteur would not place an unnecessary burden on Member States, especially those that had ratified the Convention on the Elimination of All Forms of Discrimination against Women.

Criteria for selecting a special rapporteur on laws that discriminate against women

28. Canada proposed that candidates for the post of special rapporteur on laws that discriminate against women have significant legal training. The Holy See reiterated previously submitted comments.[6]

Financial implications

29. Colombia and Egypt raised concerns about the possible financial implications of the creation of a new mechanism. Armenia would support the creation of a special rapporteur if Member States would not incur any additional costs and the mandate were implemented within existing resources.

IV. Conclusions and recommendations

30. **Member States and observers, as well as human rights treaty bodies and the Office of the United Nations High Commissioner for Human Rights, provided views on various aspects of a special rapporteur to address laws that discriminate against women. These views complement and expand on those reflected in the 2006 report and cover issues such as the mandate and financial implications of the creation of such a position and the relationship between the proposed mechanism and existing mechanisms. They also address the relationship between a new mechanism and United Nations reform discussions.**

31. **The Commission may wish to consider the advisability of the appointment of a special rapporteur on laws that discriminate against women on the basis of the present report and the 2006 report and the conclusions contained therein. Timely action in the Commission on the Status of Women on the creation of**

[6] Ibid., para. 58.

such a position and its mandate would also facilitate the ongoing review by the Human Rights Council of the special procedures established by the Commission on Human Rights. It would allow the Council to take into consideration such a new mandate and its relationship with the Council and existing mechanisms. Timely action on this matter would enable the Commission to ensure that a new mechanism is supportive of and responsive to the United Nations reform process in general and gender equality issues in particular. In determining the mandate of a new mechanism, the Commission would be in a position to clarify the manner in which coordination with existing bodies and mechanisms should take place so as to avoid overlapping and duplication.